

Personnel Management Information

Disability Leave Manual

***A Guide to Coordinating State and Federal
Laws and Regulations on Disability Leave***

**State of California
Department of Personnel Administration
Workers' Compensation Program
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This Disability Leave Manual has been developed to aid in the proper administration of the various disability leave benefits available to State employees. By clearly explaining how laws in this area are applied, we hope to ensure that employees receive the full benefits to which they are entitled.

Coordinating leave and disability is complicated. Laws in this area have differing, overlapping, and sometimes-contradictory terms and requirements. What is required or allowed under one statute may be prohibited by another. There are several laws, regulations, and rules that must be analyzed when employees become injured or ill.

While this manual attempts to cover most frequently raised issues regarding disability leave rights, inevitably questions will arise that cannot be answered in a general treatise. In these instances, please refer to the actual law, regulation, or government code for clarification. It is always advisable to review current federal or state laws before making a determination on any leave issue addressed in this manual; the legal authority has been cited at the end of each section to help the readers do this. Consultation with the appropriate Personnel Staff, Labor Relations Officer, or Legal Counsel in your department may also be necessary before approval, denial, or modification of an employee's request is recommended.

Please note that in any case where the Memorandum of Understanding (MOU) between the State and employee organization is in conflict with this guide, the MOU is controlling.

Please address any comments to:

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Acronyms

ADA - Americans with Disabilities Act

CBID - Bargaining Identifier

CalPERS - California Public Employees' Retirement System

CBID - Collective Bargaining Identifier

CFRA - California Family Rights Act

CHP - Department of California Highway Patrol

CTO - Compensating Time Off

DFEH - Department of Fair Employment and Housing

DOJ - Department of Justice

DOR - Department of Rehabilitation

DPA - Department of Personnel Administration

DR - Disability Retirement

EDD - Employment Development Department

EEOC - Equal Employment Opportunity Commission

EIDL - Enhanced Industrial Disability Leave

FMLA - Family and Medical Leave Act

IDL - Industrial Disability Leave

IDL/S - Industrial Disability Leave with Supplementation

IDR - Industrial Disability Retirement

LTD - Long Term Disability

MOU - Memorandum of Understanding

NDI - Non-Industrial Disability Leave

QID - Qualified Individual with a Disability

SCIF - State Compensation Insurance Fund

SCO - State Controller's Office

STRS - State Teachers' Retirement System

TD - Temporary Disability

TD/S - Temporary Disability with Supplementation

WC - Workers' Compensation

WCAB - Workers' Compensation Appeals

Sick Leave

DESCRIPTION

Sick leave is defined by the MOU for each the bargaining unit and the Department of Personnel Administration (DPA) Laws and Rules as a “necessary absence” because of the injury or illness of the employee or a qualifying family member.

The term “necessary absence” means that the injury or illness of the employee or family member is serious enough that the employee is unable to come to work either in his/her regular job or any other job that the employee can perform within the department.

PURPOSE

Sick leave is intended to provide paid time off for an employee to recover from an injury or illness. The MOU, negotiated through the collective bargaining process, also provide that employees may use sick leave under certain limited circumstances for injured or ill family members.

ELIGIBILITY

Following the completion of one month of continuous service, all State officers and employees are eligible to accrue sick leave, unless participating in the Annual Leave program. The number of hours that employees accumulate depends upon their time-base and collective bargaining unit agreement.

ACCRUAL

Employees are credited with sick leave on the first day of each month following completion of a qualifying pay period. There is no limit on the amount of sick leave that an employee may accumulate.

WAITING PERIOD

If the employee has a sick leave balance and the reason for his/her absence meets the sick leave criteria, all of the absences may be charged as paid sick leave from the first day.

USAGE

Sick leave may be used when:

1. The employee has an injury or illness that prevents him/her from working. This includes an injury or illness relating to pregnancy.
2. The employee has a dental, eye, or other physical or medical examination or treatment by a licensed practitioner. A “licensed practitioner” may include a licensed chiropractor, podiatrist, nurse practitioner, or other health care specialist licensed by the State.

3. The employee has been exposed to a contagious disease that is determined by a physician to require absence from work. (Example: An employee who has been exposed to tuberculosis and is required to remain home during the incubation period.)
4. The disabled employee must have repairs made to wheelchair, prosthesis, hearing aid, or durable medical product. (The employee may use a reasonable amount of sick leave for this purpose.)
5. An employee may use sick leave for himself/herself while on scheduled vacation if:
 - a. The employee becomes injured or ill and is unable to continue his/her vacation activities. The portion of the vacation during which the employee is incapacitated may be charged to sick leave.
 - b. The employee has a dental, eye, or other physical or medical examination or treatment by a licensed practitioner, as specified above.
6. The employee may use family sick leave as reasonably required and approved by the supervisor to care for a qualifying family member or a member of the immediate household who is ill or injured. This approval should be given on a case-by-case basis, depending on the individual circumstances of the request.

The amount of time that may be taken for family sick leave is specified in the bargaining unit agreements and the DPA Laws and Rules. Refer to the appropriate agreement for the limitations and any exceptions.

7. Sick leave may be used in conjunction with bereavement leave. The employee's bargaining unit determines the eligibility criteria for bereavement leave for the death of a family member and the use of sick leave or other paid leave in conjunction with or in addition to bereavement leave. Refer to the appropriate bargaining unit agreement or DPA's "Compensation Plus" booklet for specific entitlements.
8. The employee may use sick leave for recuperation from childbirth.
9. If the employee's absence is a result of an on-the-job injury or illness, the following use of sick leave will apply:
 - a. No leave credits or dock are charged on the day of the injury or illness for an absence that is the direct result of the injury. If the employee had any other type of absence on this same day, leave credits would be charged for the other type of absence.
 - b. The employee may use leave credits or dock for the 24-hour waiting period or up to the date prior to hospitalization. (NO waiting period is required if the employee is hospitalized.)
 - c. If the employee is ordered by the State Compensation Insurance Fund (SCIF) to under go a medical examination, no sick leave is charged for the absence.

Sick leave may not be used for:

1. Personal business such as court appearances, car repairs, veterinary appointments, etc. which must be charged to vacation, personal leave, compensating time off (CTO), holiday time off, annual leave, or approved absence without pay (dock); this type of approved leave is discretionary.
2. Minor illness such as common cold or other minor illness of an adult family member does not justify the use of family sick leave by an employee.
3. Sick leave is not authorized for performance of household duties, caring for well children or family members because of the illness of another family member, or providing companionship.
4. Family sick leave cannot be used for those individuals not specified in the contract or DPA Laws and Rules. In those instances, other types of leave credits or other leave programs may be used or granted.

RETIREMENT

A State employee who is a member of the California Public Employees' Retirement System (CalPERS) will be credited at his/her retirement with 0.004 year of service credit for each day of unused sick leave. An employee may also (under certain circumstances if retiring for disability) elect to receive the cash equivalent at the same rate in lieu of service credit (GC 19991.4).

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

All State of California supervisors and managers are given the responsibility to approve or deny an employee's use of sick leave. If the supervisor determines the injury or illness is valid, sick leave should be approved. If the supervisor reasonably believes that the injury or illness is not valid, the supervisor has the right—and the responsibility—to deny sick leave.

A doctor's certification or verification may be requested if a supervisor has reason to believe that sick leave is being abused. Regardless of the length of the sick leave used, the supervisor has the authority to determine if the employee is abusing the sick leave benefit. The employee is subject to the restrictions written in an attendance memo.

LEGAL AUTHORITY

DPA Rules 599.745, 599.745.1, 599.746, 599.747, 599.748, 599.749, 599.750, 599.751

Government Code Sections 19859, 19859.3, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19865, 19865.1, 19866, 19867, 19868, 19868.1, 19868.2, 19868.3

Sick Leave Administration: Guidelines for Supervisors
(This guide was prepared by DPA to provide assistance to supervisors in managing sick leave usage and correcting instances of sick leave abuse.)

Annual Leave

DESCRIPTION

The Annual Leave Program allows for the replacement of traditional vacation and sick leave credits with a more versatile annual leave pool. Annual Leave is paid time off.

PURPOSE

Annual leave credits may be used for valid sick leave purposes, as well as other approved absences. In addition, the program provides for an increased leave accumulation limit and improves the Non-Industrial Disability Insurance (NDI) benefit to 50 percent income replacement with the option of supplementing up to 100 percent of income.

ELIGIBILITY

All employees who earn leave credits are eligible to participate in the Annual Leave Program if their current appointment and collective bargaining identifier (CBID) are in one of the eligible categories. (Identify the employee's bargaining unit and determine if the employee is eligible to participate in the Annual Leave Program.).

Part-time employees, permanent-intermittent employees, and employees whose appointments are either limited term or temporary are eligible to participate in the Annual Leave Program if their current appointments and CBIDs are in one of the eligible categories.

Employees on Training & Development assignments are eligible to participate in the program only if their permanent civil service appointments and resulting CBID are in one of the eligible categories.

Statutory exempt employees who do not accrue sick leave and vacation are not eligible to participate.

ENROLLMENT

Eligible employees now have the option to change their leave program. Effective with the October 1999 pay period, eligible employees may make an initial voluntary election to change from the Sick Leave/Vacation Program to the Annual Leave Program. This election is no longer irrevocable. Employees who elect the Annual Leave Program may change to the Sick Leave/Vacation Program after they have been in the Annual Leave Program for a minimum of 24 months.

ACCRUAL

Under the Annual Leave Program, eligible employees will earn six-days of leave in lieu of the current 12 days of sick leave. The accrual rate is calculated by adding four-hours to the existing vacation accrual schedule. Managerial, supervisory, confidential, all other

excluded employees, and board and commission members whose length of service is less than ten-years have been provided a higher accrual rate. Employees who work less than full-time will earn annual leave credits pro-rated according to their time-base.

ACCUMULATION

Employees who elect annual leave will be allowed to accumulate a maximum of 640 hours of annual leave as of January 1st of each year. Exceptions to this limit will not be allowed except in extremely unusual situations and must be approved, in advance, by the Director of the DPA. All annual leave credits are treated like vacation when an employee separates from State service. Upon separation or retirement, employees in the Annual Leave Program will receive a lump sum payment at their current salary rate for their accumulated credits.

At the time of enrollment in the Annual Leave Program, an employee's vacation balance will be converted to annual leave credits. Thereafter, no vacation credits will accrue and annual leave credits will begin accruing.

Sick leave credit will no longer be earned once an employee is enrolled in the Annual Leave Program. However, sick leave balances in existence at the time of enrollment will be maintained for use by the employee for approved sick leave purposes or NDI supplementation. At retirement, unused sick leave credit will continue to be converted to retirement service credit at the current formula (2000 hours of sick leave converts to one-year of CalPERS service credit).

The NDI benefit, which covers non-work-related disability, will be improved for annual leave participants from its current level of \$135/week for up to 26 weeks to 50 percent of gross salary for up to 26 weeks. The requirement to exhaust sick leave credits prior to qualifying for NDI benefits has been eliminated.

NDI benefits for annual leave participants may also be supplemented with annual leave, sick leave, or partial employment to provide up to a 100 percent income level. At the time of an NDI claim, the employee must elect to choose either the 50 percent NDI benefit rate or a supplementation level of 75 percent or 100 percent of gross pay. Once a claim for NDI benefit has been filed and the employee has determined the rate of supplementation, the supplemental rate shall be maintained throughout the disability period. Employees may choose a different supplementation rate for claims related to subsequent disability.

Note: Employees who enroll in the Annual Leave Program while receiving NDI will continue to receive the original NDI benefit for the duration of the claim. The improved benefit would be available on subsequent claims.

USAGE

Annual leave can be used to meet an employee's need for paid time off for any management-approved absence that was previously covered by sick leave or vacation. When annual leave is used for sick leave purposes, the employee's supervisor may require the employee to submit substantiation including, but not limited to, a physician statement.

Annual leave may be taken in half-hour increments regardless of whether or not it is being used for sick leave, vacation, or other time off.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

Departments are responsible for administering the annual leave benefit in accordance with DPA Laws and Rules and collective bargaining agreement.

LEGAL AUTHORITY

DPA Rules 599.752, 599.752.1, 599.752.2, 599.752.3, 599.753

Government Code Sections 19858.3, 19858.4, 19858.5, 19858.6, 19858.7

Memorandums of Understanding

Non-Industrial Disability Insurance

DESCRIPTION

Benefits under the Non-Industrial Disability Insurance (NDI) program provide half pay for up to 26 weeks for eligible employees. The payment is limited to \$125 or \$135, depending on the collective bargaining agreement that covers the employees. Excluded employees receive a maximum of \$135 per week.

Employees who are in the Annual Leave Program receive NDI payments equal to half pay with the ability to supplement up to 75 percent or 100 percent of income with leave credits.

PURPOSE

NDI is an employer-paid benefit that provides salary continuation to an employee who is unable to work due to a non-work-related injury or illness or a medically disabling condition from pregnancy or childbirth.

ELIGIBILITY

An employee must be a current active member of the CalPERS, the State Teachers' Retirement System (STRS) or a full-time or part-time State Officer or employee of the Legislature. An employee must be in "compensated employment" (in pay status and not separated by a formal leave of absence).

All permanent part-time and full-time employees, probationary employees, and State Officers are covered under the program. Permanent part-time and permanent intermittent employees and State Officers who have a least six monthly compensated pay periods of service in the 18 months immediately preceding the pay period in which the disability begins, may also be eligible for NDI benefits on a pro-rated basis.

WAITING PERIOD

There is a seven-day waiting period for the majority of represented and all excluded employees covered by NDI. To determine the waiting period, the appropriate bargaining agreement for the employee should be reviewed. This waiting period will be waived if the employee is hospitalized. Emergency room care does not constitute hospitalization and will not waive the waiting period.

DISABILITY

Disability or disabled includes mental or physical illness and mental or physical injury, including any injury or illness resulting from pregnancy, childbirth, or related medical condition. An employee is deemed disabled on any day when, because of his or her physical, mental, or medical condition, he/she is unable to perform his or her regular or customary work.

LENGTH OF BENEFIT

The NDI benefit program is available for up to 26 weeks or 182 calendar days.

USAGE

The NDI benefit may be used when an employee is unable to work due to a non-work-related injury or illness or a medically disabling condition from pregnancy or childbirth.

FILING FOR NDI BENEFITS

An employee filing for NDI benefits should notify his/her immediate supervisor and obtain the DE 8501 (NDI) form. The attendance clerk or the personnel services specialist will complete the top portion and return the DE 8501 (NDI) form to the employee.

The employee should complete the bottom portion of the claim form and give it to his/her physician to complete the Doctor's Certificate. The physician mails the form to the NDI office.

Note: The employee may file a claim for the NDI benefit while his/her Workers' Compensation claim is pending.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

The Employment Development Department (EDD) is responsible for administering the NDI benefit. EDD has NDI field offices that determine the period of eligibility and authorize payment on claims.

State departmental personnel offices are responsible for requesting payment from the State Controller's Office (SCO). This request is based on the authorizations issued by NDI field offices.

LEGAL AUTHORITY

DPA Rules 599.770, 599.771, 599.772, 599.773, 599.774, 599.775, 599.776, 599.776.1, 599.777, 599.778

Government Code Sections 19878, 19879, 19879.1, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19886, 19886.1, 19886.2

Memorandums of Understanding

Catastrophic Leave

DESCRIPTION

Catastrophic leave can be used when an employee has exhausted all leave credits and has suffered a financial hardship due to an injury or prolonged illness of the employee or his/her family member. The employee may request catastrophic leave. In addition, any person can make the request for catastrophic leave on behalf of the employee; the department's director or his/her designee can also request the leave for the employee. A Catastrophic Leave bank will be established by the department to receive donated vacation, annual leave, CTO, and holiday credits donated from other state employees in a minimum of eight-hour increments.

PURPOSE

Catastrophic leave permits salary and benefit continuation for employees who have exhausted all paid leave because of a serious injury or illness or the need to care for a seriously injured or ill family member. This benefit is also available to an employee who has exhausted all leave credits, except sick leave, who resides in a county where the Governor has declared a State of Emergency because of a natural disaster.

DEFINITION OF CATASTROPHIC INJURY OR ILLNESS

Catastrophic injury or illness is defined as an injury or illness which incapacitates the employee or a member of the employee's family or household and which creates a financial hardship because the employee has exhausted all eligible leave credits.

DEFINITION OF NATURAL DISASTER

A natural disaster is defined as an act of nature such as a flood or an earthquake that has had an effect on the employee's principle residence and the Governor has declared a State of Emergency in the county where the employee resides.

REQUESTING CATASTROPHIC LEAVE

The prospective recipient usually submits a request to his/her department head (or designee), along with appropriate verification of the injury or illness (or occurrence, in the case of a natural disaster) for the requested leave. In cases where the potential recipient is unable to initiate the process, a family member or the department head (or designee) may

act on the employee's behalf. The donated leave may be used upon approval by a department head or designee.

ELIGIBILITY

All State employees are eligible.

USAGE

In most circumstances, only severe, extended illnesses, and catastrophic medical problems will be considered for catastrophic leave. Normally, leave credits donated under this program would not exceed the period of time the employee is off work or six-months, whichever comes first. However, if approved by the appointing authority, the time can be extended.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

Each department is responsible for administering the Catastrophic Leave Benefit.

LEGAL AUTHORITY

DPA Rules 599.925, 599.925.1, 599.925.5

Memorandums of Understanding

Family and Medical Leave Act

DESCRIPTION

The Family and Medical Leave Act (FMLA) gives eligible employees the right to take unpaid leave. FMLA is an approved leave of absence for up to 12 weeks for employees unable to work due to a serious health condition. Once an employee's leave period is concluded, the employer must reinstate the employee to the same or equivalent job held at the time FMLA leave was granted.

PURPOSE

The FMLA allows employees a job-protected leave of absence to care for a family member who has a serious health condition or the employee's own health condition. FMLA may also be used for the birth or adoption of a child or to care for a spouse, parent, or child with a serious health condition. The employer is required to maintain any medical, dental, and vision benefits during this leave.

ELIGIBILITY

All State employees who have worked for the employer for a total of 12 months and who have 1,250 hours of physical time worked in the year preceding the employees' request for leave are eligible for FMLA.

USAGE

The employee may use FMLA to care for the employee's newborn child or for the adoption or care of a foster child. The employee may also use FMLA to care for the employee's spouse, son, daughter, or parent who has a serious health condition, or for a serious health condition that renders the employee unable to perform his/her job, as certified by a physician.

The following events may alert a supervisor, manger, or timekeeper when an employee may be entitled to the FMLA leave:

1. Employee submits or requests a claim for NDI.
2. Employee requests the establishment of a Catastrophic Leave.
3. Employee requests a Leave of Absence.
4. Employee requests to use leave credits.
5. Employee has used all available leave credit and is now on dock pay status.

DEFINITION OF SERIOUS HEALTH CONDITION

A "Serious Health Condition" is defined as an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:

- a. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

- b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy

FMLA leave may be granted for any period of incapacity due to pregnancy or for prenatal care.

Note: An employee's own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under the California Family Rights Act (CFRA).

4. Chronic Conditions Requiring Treatments

A chronic condition is defined as a condition which:

- a. Requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider;
- b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which the treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's Disease, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments for a non-chronic condition, including any period of recovery from this condition. The condition would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

DEFINITION OF FAMILY MEMBERS

1. Spouse

Husband or wife as defined or recognized under California State Law for purposes of marriage. California does not recognize common-law marriage.

2. Parent

A parent would be defined as a biological parent or an individual who has acted as a parent to an employee when the employee was a child. This term does not include parents-in-law.

3. Child

A biological, adopted, foster son or daughter, stepchild, legal ward, or child of a person who has acted as a parent.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

FMLA is administered by the United States Department of Labor.

All State of California agencies and departments have the responsibility to:

1. Inform their employees of FMLA benefit criteria.
2. Provide an FMLA Election Form to any employee requesting such a leave.

LEGAL AUTHORITY

Federal Family and Medical Leave Act, 29 U.S.C., S2601 et seq., and 29 CFR Part 825.

California Code of Regulations, Title 2, Division 4, Section 7297.0 et seq.

Memorandums of Understanding

California Family Rights Act

DESCRIPTION

The California Family Rights Act (CFRA) also known as the Moore-Brown-Roberti Family Rights Act of 1993, makes it an unlawful employment practice for an employer to refuse a request for family care and medical leave, as provided under the act.

PURPOSE

CFRA allows employees a job-protected leave to care for family members with a serious health condition or their own serious health condition. It provides up to 12 weeks of unpaid leave for the employee and continuation of employer-provided health benefits, including dental and vision.

ELIGIBILITY

All employees who have worked for the employer for a total of 12 months and who have 1,250 hours of physical time worked in the year preceding the employee's request for leave are eligible.

LENGTH OF BENEFIT

CFRA provides up to 12 weeks of unpaid leave and there is no waiting period.

CFRA AND FMLA - CONCURRENT PERIODS

For eligible employees, CFRA and FMLA provide the following:

1. Up to 12 weeks per year of unpaid leave.
2. Continuation of all benefits during the leave (employees may be required to pay their portion of the premiums).
3. Right to re-instatement to previous position or one that is equivalent in terms of benefits, pay, and other conditions of employment.

Note: An employee's own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

The Department of Fair Employment and Housing (DFEH) is responsible for administering the program.

LEGAL AUTHORITY

Government Code Sections 12945.1, 12945.2 and 19702.3

California Code of Regulations Title 2, Division 4 Section 7297.0 et seq.

Memorandums of Understanding

Pregnancy Disability Law

DESCRIPTION

Pregnancy Disability Law permits an employee to take a minimum of six-weeks or up to 12 weeks for a pregnancy-related disability leave. Under California law, female employees may take unpaid leave for the period during which they are disabled because of pregnancy, childbirth, or a related medical condition.

PURPOSE

Pregnancy Disability Law requires employers to treat employees with a medical disability caused by pregnancy in the same manner they treat other employees with a temporary medical disability. Pregnancy Disability Law allows female employees affected by pregnancy, childbirth, or related medical conditions to take a job-protected leave.

ELIGIBILITY

All State employees with a pregnancy, childbirth, or related medical condition are eligible.

LENGTH OF BENEFIT

PDA allows up to 12 weeks of unpaid leave.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

DPA is responsible for the administration of this program.

LEGAL AUTHORITY

Government Code Section 12945

Unpaid Leave of Absence

DESCRIPTION

Employees are allowed to take unpaid leave with a guarantee they can return to their former position when the leave ends. An unpaid leave of absence allows an employee to be away from his/her job for an extended period of time for reasons other than an approved paid leave. The employee will be offered the opportunity to continue his/her medical benefits during the unpaid leave through the "Direct Pay" process.

PURPOSE

The leave of absence provides an unpaid leave of absence from an employee's job for reasons other than an approved leave and allows the employee to return to his/her former position when the leave ends.

ELIGIBILITY

All State employees who have permanent status are eligible, subject to management's approval. A 30-calendar-day leave may be granted to non-permanent employees.

USAGE

An unpaid leave of absence may be granted for, but not limited to, the following reasons:

1. Attending school or college or to enter training to improve the quality of the employees' service;
2. Temporary incapacity due to injury or illness;
3. On loan to another governmental agency for performance of a specific assignment;
4. To seek or accept other employment during a layoff situation or to otherwise lessen the impact of an impending layoff; or
5. For other reasons equally satisfactory as determined by the appointing power.

REQUESTING AN UNPAID LEAVE OF ABSENCE

Each request should be initiated according to departmental policy. Most State agencies require substantiation to support a request for an unpaid leave of absence.

LENGTH OF THE UNPAID LEAVE OF ABSENCE

Extensions of an unpaid leave of absence may be requested by the employee and may be granted by the department head or designee. State departments are delegated the authority to grant unpaid leaves of absence up to one-year. State departments have the authority to extend the leave beyond the usual one-year timeframe with substantial justification.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

Departments administer their own unpaid leave of absence program.

LEGAL AUTHORITY

DPA Rules 599.781, 599.782, 599.783, 599.784, 599.785

Government Code Sections 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19991.8, 19991.9, and 19991.10

Workers' Compensation Program

DESCRIPTION

The Workers' Compensation (WC) Program is a no-fault system that provides assured and fixed benefits to State employees injured on the job and is the exclusive remedy for an employee who is injured on the job.

PURPOSE

The WC program provides compensation to employees for work-related injuries or illnesses, including medical treatment, temporary payment for lost wages, and permanent disability payments.

ELIGIBILITY

All State of California employees are eligible.

ABSENCE REPORTING

After receiving treatment for the injury or illness, the employee must inform his/her supervisor of the physician's medical opinion concerning the employee's ability to return to work. All time off due to the injury or illness must be reported on the Absence Request form (STD 634). No time is charged against leave credits on the day the injury or illness occurred; however, a notation must be made to show the date of injury on the STD 634.

WAITING PERIOD

Before the start of benefits, injured employees will serve a waiting period of three-calendar days. The waiting period need not be consecutive days. Partial days of absence for doctor appointments or authorized periods of disability may be accumulated to equal full days and charged to the waiting period. The waiting period is waived if the employee is hospitalized, if the injury was caused by a criminal act of violence, or the employee is disabled more than 14 calendar days, or if the employee is eligible for Labor Code Section 4800/4800.5.

BENEFITS AVAILABLE

There are seven types of temporary disability benefit programs available to state employees under workers' compensation:

1. Industrial Disability Leave
2. Industrial Disability Leave with Supplementation
3. Enhanced Industrial Disability Leave
4. Labor Code Section 4800
5. Labor Code Section 4800.5
6. Temporary Disability
7. Temporary Disability with Supplementation

In addition, there are benefits paid for medical treatment, permanent disability, vocational rehabilitation, and death.

1. Industrial Disability Leave (IDL)

Established by the Berryhill Total Compensation Act of 1975, IDL is a salary continuation program specifically designed as an alternative benefit program to Workers' Compensation Temporary Disability (TD). The legal authority for this program is found in Government Code Sections 19869 - 19877.1. To qualify for IDL benefits, an injured employee must be an active member of the CalPERS or the STRS.

IDL benefits are paid in lieu of TD. An employee's appeal regarding IDL benefits is within the jurisdiction of the Workers' Compensation Appeals Board (WCAB) with regard to the basic time-frames, amounts, and penalties relevant to that portion of the IDL payment that is equal to the TD payment. However, the jurisdiction of the WCAB is limited solely to the issue of industrial causation and eligibility for benefits; the WCAB cannot award costs against this system pursuant to Section 4600, 5811, or any other provision of the Labor Code.

IDL benefit payments are based on the employee's full net salary for the first 22 working days of disability. Thereafter, the payments are based on two-thirds of the employee's normal gross salary. Even though IDL is not taxable, the gross amount for IDL during the first 22 working days is reduced by the amount that would have been taken for taxes (federal, Social Security, Medicare, and state taxes). This is called the "reduced gross" and is the amount reflected on the warrant register, as well as on the earnings statement. Because the statutory intent of the IDL benefit is a continuation of the employee's net compensation, this reduced gross is calculated for the period that the employee is disabled and unable to work.

On the 23rd working day, IDL pay is based on two-thirds of the employee's gross salary without any reduction for taxes. These payments are in the amount of the employee's full pay less withholdings, based on his/her exemptions in effect on the day of disability for federal income taxes, state income taxes, and Social Security taxes.

IDL benefits are payable for a maximum of 52 weeks, or 365 calendar days, within a two-year period, from the first day of disability or first time lost due to the injury or illness. Any time paid as IDL, whether one hour or eight hours, constitutes one day of IDL applied to the maximum time limits.

Contributions to CalPERS or STRS are deducted from the amount based on full pay. Discretionary deductions of the employee, including those for coverage under a state health benefits plan in which the employee is enrolled, shall continue to be deducted unless canceled by the employee.

2. Industrial Disability Leave with Supplementation (IDL/S)

All excluded employees and rank-and-file employees in all Bargaining Units (except Bargaining Unit 5) who meet the eligibility requirements for IDL are also eligible for IDL/S.

When an injury or illness has been determined to be work related and WC benefits are approved, an employee will be given 15 calendar days in which to choose IDL or IDL/S. The 15 calendar day "election period" commences on the date that the department informs the employee that he/she is eligible for WC benefits. Employees who fail to make an election

within 15 calendar days will be placed on IDL without supplementation. Employees who fail to make an election in a timely manner forfeit the right to supplement the IDL benefit at any future time for this disability.

If an employee elects IDL/S, the employee may choose to supplement at the level sufficient to yield an income which approximates his/her full net pay or at a level that is less than that amount. However, supplementation is not applicable for the first 22 days because the employee receives full net pay during that period. Once the supplementation level is selected, the employee may elect to decrease the amount at any point in the future, but he/she may not elect to increase the amount. Any subsequent reduction in the supplementation amount will be made on a prospective basis only. Levels cannot include fractions of hours.

If an employee is on IDL a portion of the month, and the amount of supplementation selected exceeds the amount necessary to obtain full net pay, the Personnel Office must adjust the supplementation amount to ensure that the employee's disability payment does not exceed full net pay. "Full net pay," means the employee's gross salary minus federal and state taxes, OASDI/Medicare, and Retirement. Miscellaneous deductions will not be factored into the calculation of the employee's full net pay. Income received from supplementation is taxable and will be reported on the employee's W-2 Form at the end of the year. Federal and state taxes will be based on the flat tax rate of 28 percent and six percent, respectively.

3. Enhanced Industrial Disability Leave (EIDL)

EIDL was established in 1984 through MOU's between the State and exclusive representatives for rank-and-file employees in specific bargaining units. Government Code Section 19871.2 provides the authority for excluded employees to have this benefit also. Currently, employees in Bargaining Units 1, 3, 4, 6, 7, 8, 11, 12, 13, 15, 16, 17, 18, 19, 20, and excluded employees are eligible for this benefit if they suffer a qualifying illness or injury.

To qualify for EIDL benefits, the injured employee must be temporarily disabled as a result of an injury incurred in the official performance of his/her duties. Such injury must be a physical injury that has been directly and specifically caused by:

- a. An assault by an inmate, ward, or parolee under the jurisdiction of the California Department of Corrections or the California Youth Authority; or
- b. Responding to, returning from, or fighting an "active fire"; or
- c. A criminal act of violence against a peace officer who was performing In the line of duty (a criminal act of violence is an act which would constitute a misdemeanor or felony if pursued to conviction);
- d. A domestic animal while the peace officer was performing in the line of duty;
- e. An assault by a resident, inmate, patient, client, or member under the Jurisdiction of the Department of Developmental Services, the Department of Mental Health, or the Department of Veterans' Affairs;

- f. An injury incurred while at a crime scene and while performing the official duties of a Department of Justice Bureau of Forensic Services crime scene responder;
- g. Involvement in an automobile accident while performing a driving examination, or as a result of a criminal act of violence while performing the said duties of a Department of Motor Vehicle licensing examiner; or
- h. An assault while performing the said duties of the classification of Inspectors, Department of Consumer Affairs and Program Representative, and Bureau of Automotive Repair.

The department's appointing power or his/her designee has the final decision regarding an employee's eligibility for EIDL based on the specific circumstances of each case. EIDL is an extension of IDL and has most of the same requirements. However, permanent intermittent employees in Bargaining Unit 6 may be entitled to EIDL even if they are not CalPERS/STRS members. As with IDL, employees must serve a waiting period of three-calendar days. This waiting period can be waived if the employee is hospitalized, unable to work for more than 14 calendar days, or the injury is the result of a criminal act of violence.

4. Labor Code Section 4800

Labor Code Section 4800 is a special benefit available only to an eligible peace officer that is a member of the Department of Justice (DOJ) falling within the "state peace officer/firefighter" classification. An officer who is disabled by an injury arising out of and in the course of his or her duties is entitled, regardless of his or her period of service with DOJ, to leave of absence while disabled, without loss of salary. Full salary is paid in lieu of disability payments under this Labor Code Section and is for a period not to exceed one-year. It provides for up to one-year of full pay for injuries that occur in the line of duty.

This section applies only to members of DOJ whose principal duties consist of active law enforcement and does not apply to persons employed in DOJ whose principle duties clearly do not fall within the scope of active law enforcement service.

This section does not apply to periods of disability which occur subsequent to termination of employment by resignation, retirement, or dismissal. When this section does not apply, the officer is eligible for those benefits which would apply if this section had not been enacted.

5. Labor Code Section 4800.5

Labor Code Section 4800.5 is a special benefit available to eligible peace officers. It provides for up to one-year of full pay for injuries that occur in the line of duty. Whenever a sworn member of the Department of the California Highway Patrol (CHP) is disabled by a single injury, excluding disabilities that are the result of cumulative trauma or cumulative injuries, arising out of and in the course of his/her duties, he/she is entitled, regardless of his/her period of service with CHP, to leave of absence while disabled without loss of salary. The disabled officer will receive his/her full salary in lieu of disability payments under this section for a period not to exceed one-year.

This section applies only to members of CHP whose principle duties consist of active law enforcement and does not apply to persons whose duties clearly do not fall within the scope of active law enforcement service.

Benefits payable for eligible sworn members of CHP whose disability is solely the result of cumulative trauma or injury shall be limited to the actual period of temporary disability or entitlement to maintenance allowance, or for one-year, whichever is less.

This section does not apply to periods of disability that occur subsequent to termination of employment by resignation, retirement, or dismissal.

The WCAB may determine, upon request of any party, whether or not the disability referred to in this section arose out of and in the course of duty. In any action in which a dispute exists regarding the nature of the injury or the period of temporary disability or entitlements, the WCAB has the jurisdiction to award and enforce payment of these benefits.

6. Temporary Disability (TD)

TD is payment for lost work time paid to an employee while he/she is being treated and is unable to return to work. The employee is eligible for TD benefits while recovering from the injury and after IDL benefits have been exhausted. The payment continues until the employee's condition is determined to be permanent and stationary, the medical condition has reached a plateau, and the medical condition is not expected to change.

TD payments are equal to two-thirds of the employee's average weekly earnings at the time of the injury, up to a ceiling determined by the Legislature. Payments have been adjusted over time as salaries have increased.

Partial TD payments are equal to two-thirds of the estimated wage loss if the employee is paid a lower wage or works fewer hours because of the TD.

7. Temporary Disability with Supplementation (TD/S)

The State offers employees the option to supplement TD payments with their leave credits to allow them to receive a benefit that is comparable to their normal salary. Employees who have sufficient leave credits to cover their absence can supplement their TD payments. Leave credits include any accumulated sick leave, vacation, annual leave, and compensated overtime. In addition, any applicable holiday(s) that falls within the pay period and the personal holiday can also be used to supplement.

TD payments are issued by SCIF to the employee and have no mandatory or voluntary deductions withheld. TD payments are mailed directly to the employee from SCIF. The supplementation payments, which are paychecks issued by the SCO, are paid by the employer and are subject to all mandatory deductions including taxes, retirement contributions, garnishments, and union dues. Voluntary deductions, such as health, dental, and vision benefits or life insurance, can also be withheld. However, deductions can only be made as long as there are sufficient leave credits. Mandatory deductions will have priority over voluntary deductions.

Employees can also choose not to supplement and receive only their TD payments. Previously, employees who declined TD/S would not have their health benefits continued by the State because they were on non-pay status and no paycheck was issued. A policy change took effect on June 13, 2000, which entitles employees to a continuation of health, dental, and vision benefits even if they decline to supplement their TD with available leave credits. If an employee contribution is due, arrangements must be made by the department to collect that portion directly from the employee.

Since a paycheck is not issued by SCO, the agency is required to submit a Payroll Adjustment Notice form (STD 674) for each pay period involved. Under remarks, the STD 674 should state:

“Requesting continuation of medical benefits for employee on Temporary Disability, as required by LC 132a and Gov. Code 19863.”

The STD 674 should be sent to the Benefits Unit within the Personnel Payroll Services Division of the SCO.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

The Legislature has delegated the operation of the WC system to several departments within the Executive Branch.

DPA's, Workers' Compensation Program, negotiates and administers the State's Master Agreement with the SCIF to provide WC claims processing and legal representation to legally uninsured state agencies. DPA also reviews SCIF and departmental compliance with the Master Agreement and applicable laws, makes recommendations for improvement, and provides training for departmental Return-to-Work Coordinators.

SCIF is the state entity that provides claims and legal services under the Master Agreement to those agencies that are legally uninsured for WC. SCIF makes liability decisions on all claims, administers benefits, verifies disability time for IDL, and negotiates the final resolution of claims. The SCIF attorneys represent the departments with any legal proceedings before the WCAB.

State agency personnel offices deal primarily with their departmental Claims Coordinators, Return-to-Work Coordinators, or Health and Safety Officers. Departments are responsible for identifying and facilitating early return to work for their injured employees, processing IDL benefits, and giving timely authority to SCIF for final claims resolutions.

The Department of Industrial Relations, WCAB, adjudicates any disputes arising out of WC claims. Each local WCAB, located throughout the State, is staffed by a presiding Administrative Law Judge, several subordinate judges, and staff. These judges hold conferences, conduct trials, take testimony, and render decisions. Each local WCAB also has Information and Assistance Officers who answer questions from injured workers. The Disability Evaluation Unit can issue permanent disability ratings on WC disability claims that are brought before the WCAB for hearing or settlement.

LEGAL AUTHORITY

Government Code Sections 19863, 19863.1, 19865.1, 19869, 19870, 19871, 19871.1, 19871.2, 19872, 19873, 19874, 198875, 19876, 19876.5, 19877, 19877.1

DPA Rules 599.755, 599.756, 599.757, 599.758, 599.759, 599.760, 599.761, 599.762, 599.763, 599.764, 599.765, 599.766, 599.767, 599.768, 599.769

Workers Compensation Laws of California (Labor Code Section):
Chapter 12, Retirement From Employment, Article 6, Disability Retirement;
Chapter 13, Retirement Benefits, Article 1, General Provisions; Chapter 14, Death Benefits, Article 1, General Provisions

Long Term Disability Plan

DESCRIPTION

The Long Term Disability (LTD) Plan is a voluntary, employee-paid program for income protection insurance offered to excluded employees (managers, supervisors, and confidentials).

PURPOSE

The LTD program is designed to provide income replacement in the event an insured employee becomes disabled due to an injury or illness and cannot work for a long period of time (six-months or longer).

ELIGIBILITY

An employee is eligible to enroll in the voluntary LTD plan if he/she meets all of the following criteria:

1. Active, excluded employee;
2. Half-time or greater time base; and
3. Designated managerial, supervisory, confidential or excluded/exempt are eligible to enroll in supervisory/management benefits as a result of mid-management reductions.

WAITING PERIOD

The insured employee must be disabled for at least six-months before LTD benefits will become effective.

REQUESTING LTD

Employees who become disabled and wish to file a claim should contact DPA, Benefits Division, at (916) 324-0533/CALNET 454-0533, as soon as possible to request the necessary forms.

LENGTH OF BENEFIT

LTD coverage will supplement other disability income sources to guarantee a monthly benefit up to 65 percent of an employee's base salary if he/she cannot work because of injury or illness. Monthly benefits may be paid to age 65. If an employee becomes disabled after age 60, monthly benefits may be paid past age 65.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

DPA acts as the program administrator for the LTD plan insurance provider.

LEGAL AUTHORITY

Government Code Section 19867

Disability Retirement

DESCRIPTION

Disability Retirement (DR) is available to an eligible State employee who is a member of the CalPERS and is no longer able to perform the duties of his or her current position.

PURPOSE

DR provides income to an employee who experiences either a work-related or a non-work-related illness or injury and whose disability is of permanent or uncertain duration.

There are two types of disability retirement: DR and Industrial Disability Retirement (IDR). IDR benefits are available to Safety, Patrol, and Peace Officer/Firefighter members for any job-related illness or injury.

All other State employees are eligible for a DR whether the injury or illness occurred on or off the job.

ELIGIBILITY

Any State employee who is unable to work due to an injury or illness, is a member of CalPERS, and meets minimum service requirements is eligible. State employees retiring under a DR must have five-years of credited service if they are in Tier One, or ten-years of credited service if they are in Tier Two.

AUTHORITY FOR DETERMINATION OF DISABILITY RETIREMENT

CalPERS will make the determination to accept or deny the disability retirement application. The disability decision is based upon competent medical opinion and all medical, vocational, and other information provided by the member, the department, and SCIF. The determination is based on an actual/present disability, not a prospective disability. The member must be substantially incapacitated for the performance of his/her job duties.

Substantial incapacity must be due to a medical condition of permanent or extended and uncertain duration. CalPERS will look at the job duties and the frequency of those duties and how critical those tasks are to the performance of the job. CalPERS may order a medical examination of the employee to determine whether the member is incapacitated for the performance of duty.

LENGTH OF BENEFIT

DR benefits are payable for as long as the employee is disabled. If the employee is no longer disabled, the employee has mandatory reinstatement rights to an appropriate vacant position in the same classification, or in a comparable classification.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

CalPERS is responsible for administering the DR program.

LEGAL AUTHORITY

Government Code Sections 599.779, 599.779.1, 599.779.2, 599.779.3, 599.779.4, 599.779.5, 599.779.6, 599.779.7

California Public Employees' Retirement Law (PERL):

Article 1. Voluntary Service Retirement, G.C. 21060 through G.C. 21077;

Article 3. Second Tier Retirement, G.C. 21090 through G.C. 21100;

Article 4. Reduced Work-time for Partial Service Retirement, G.C. 21110 through G.C. 21132;

Article 6. Disability Retirement and Industrial Disability Retirement G.C. 21150 through G.C. 21176;

Article 5. Disability Retirement Benefits, G.C. 21400 through G.C. 21432

Workers' Compensation Laws of California (Labor Code Sections):

Chapter 12, Retirement From Employment, Article 6, Disability Retirement;

Chapter 13, Retirement Benefits, Article 1, General Provisions; Chapter 14, Death Benefits, Article 1, General Provisions

Industrial Disability Retirement

DESCRIPTION

IDR is available to an eligible safety employee who is a member of the CalPERS and is no longer able to perform the duties of his or her current job because of a work-related injury or illness. Miscellaneous and industrial members are also eligible for industrial disability if the disability is the result of a violent attack by a ward, inmate, or a patient in a forensic hospital.

PURPOSE

IDR provides an income replacement for permanently disabled employees who cannot perform their job due to a work-related injury or illness.

ELIGIBILITY

This section shall only apply to State Safety, State Industrial, and State Miscellaneous members employed in any State bargaining units for which a MOU has been agreed to by the State employer and the recognized employee organization.

The employee must be a CalPERS member in safety, patrol, or peace officer/firefighter category. There is no minimum service or age requirement. To be eligible for IDR the employee must be in one of the above categories and the disabling injury or illness must be work related.

DETERMINATION OF CAUSATION

If industrial causation is disputed, the WCAB will make the determination. A finding of industrial disability is based on a review of medical reports and job duties leading to the determination that the injury or illness is work-related (industrial), and that the employee is unable to perform the duties of the job, and that the injury or illness is of a permanent or extended duration.

APPLICATION PROCESS

The employee, any person acting on the employee's behalf, or the head of the department where the employee is employed can file an application for IDR.

AUTHORITY FOR DETERMINATION OF DISABILITY RETIREMENT

CalPERS will make the determination to accept or deny the IDR application. The disability decision is based upon all medical, vocational, and other information provided by the member, the department, and SCIF. The determination is based on an actual/present disability, not a prospective disability. The member must be substantially incapacitated for the performance of his/her job duties. Substantial incapacity must be due to a medical condition of permanent or extended and uncertain duration.

CalPERS will look at the job duties and the frequency of those duties and how critical those tasks are to the performance of the job. They may order a medical examination of the employee to determine whether the member is incapacitated for the performance of duty.

LENGTH OF BENEFIT

IDR consists of a monthly retirement allowance paid to the disabled member for the rest of his or her life or until the member recovers from the disabling injury or illness.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

CalPERS is responsible for administering of the IDR program.

LEGAL AUTHORITY

Government Code Sections 599.779, 599.779.1, 599.779.2, 599.779.3, 599.779.4, 599.779.5, 599.779.6, 599.779.7

California Public Employees' Retirement Law (PERL):

Article 1. Voluntary Service Retirement;

Article 3. Second Tier Retirement;

Article 4. Reduced Work-time for Partial Service Retirement;

Article 6. Disability Retirement and Industrial Disability Retirement, G.C. 21150 through G.C. 21176;

Article 5. Disability Retirement Benefits, G.C. 20046.5, 20047, 20048 and G.C. 21400 through G.C. 21432

Workers Compensation Laws of California (Labor Code Sections):

Chapter 12, Retirement From Employment, Article 6, Disability Retirement;

Chapter 13, Retirement Benefits, Article 1, General Provisions;

Chapter 14, Death Benefits, Article 1, General Provisions

NextSTEP Program

DESCRIPTION

The NextSTEP Program was developed in 1993 to improve the State's ability to return disabled employees back to State service. Only employees in specific bargaining units were eligible to participate. The NextSTEP program officially ended as of January 1, 2000. However, the program remains in effect for injuries or illnesses that occurred from January 1, 1993, through December 31, 1999. The program will be phased out as the remaining claims are resolved.

PURPOSE

The goal of the NextSTEP program is to place the injured employee into an alternative position within the State if the employee is unable to return to his/her usual and customary duties as a result of a work-related injury or illness.

ELIGIBILITY

This benefit was negotiated by the exclusive representatives for the employees and was required under specific circumstances. Employees who choose not to participate in the NextSTEP program may waive their rights to other benefits.

Employees who were in Bargaining Units 1, 4, 15, 18 and 20 who experienced a qualifying industrial injury or illness on or after January 1, 1993, through December 31, 1999, and who are permanently unable to perform the duties of their position are eligible.

Also eligible are employees who are State Miscellaneous Members or State Industrial Members whose injury or illness occurred as a result of a violent act by a patient or inmate while performing duties at:

1. Patton State Hospital, Atascadero State Hospital, Napa State Hospital, Metropolitan State Hospital, the psychiatric program at the California medical facility at Vacaville, or other forensic facility;
2. A State prison or facility of the Department of Corrections, or correctional school or facility of the Youth Authority; or
3. Elsewhere while acting in the scope of employment which regularly and substantially involves contact with patients and clients of a forensic facility or inmates or parolees. For State Safety Retirement members, the injury or illness may occur as the result of any employment activity.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

State departmental personnel offices are responsible for administering the NextSTEP program in coordination with DPA. The department employing the injured worker at the time of injury (called the originating department) assists the employee in locating an appropriate position as soon as the medical records reflect it is likely that the employee will be unable to return to his/her usual and customary occupation.

The originating department assists the injured employee with a job search for 90 days. However, if the employee is unable to find another position with the State, the program provides an enhanced IDR to qualified employees.

LEGAL AUTHORITY

Government Code Sections 19876.5, 19998.1, 20038.5, 20047, 20048, 21159, 21160, 21162, 21195, 21410, 21417

DPA Rules 599.779, 599.779.1

MEMORANDUMS OF UNDERSTANDING

Medical Demotion or Transfer

DESCRIPTION

Medical demotion or transfer is available to the appointing power if an employee is unable to perform the work of his or her present position, but is able to perform the work of another position.

PURPOSE

Medical demotion or transfer provides an employee with another more suitable position. The employee receiving the medical demotion or transfer maintains reinstatement rights to an appropriate vacant position in the same classification, in a comparable classification, or in a lower related classification, if it is determined by the State Personnel Board (SPB) that the employee is no longer incapacitated for duty.

ELIGIBILITY

Any State employee who is medically unable to perform the work of his/her position, but is able to perform the work of another position, including one of less than full time, is eligible.

WAITING PERIOD

The employee shall be given written notice of the demotion or transfer at least 15 days prior to the effective date thereof.

APPEAL RIGHTS

An employee may appeal a medical demotion or transfer no later than 15 days after service of the notice of medical demotion.

RESPONSIBILITY FOR ADMINISTERING THE STATUTE

The SPB is responsible for the administration of the medical demotion or transfer statute.

LEGAL AUTHORITY

Government Code Section 19253.5 (a, b, c, d, e, f, g, h)

Medical Termination

DESCRIPTION

Medical termination is available to the appointing power to terminate the appointment of an employee when he/she is unable medically to perform the duties of his/her appointed position.

PURPOSE

A medical termination may be appropriate for an employee, if the department has medical findings (obtained through a "fitness for duty" or other medically objective examination) that document he/she is unable to perform the work of his/her position.

Medical termination provides an employee with mandatory reinstatement rights to an appropriate vacant position in the same classification, in a comparable classification, or in a lower related classification. The mandatory reinstatement is appropriate if determined by SPB that the employee's medical condition has improved enough for him/her to return to duty at the job that he/she held previously.

ELIGIBILITY

State employees are eligible for a medical termination if they are medically unable to perform the work of their position and are ineligible to retire for disability or waive that right.

WAITING PERIOD

The employee shall be given written notice of the termination at least 15 days prior to the effective date thereof.

APPEAL RIGHTS

An employee may appeal a medical termination no later than 15 days after service of the notice of medical separation.

RESPONSIBILITY FOR ADMINISTERING THE STATUTE

SPB is responsible for the administration of the medical termination statute.

LEGAL AUTHORITY

Government Code Section 19253.5 (a, b, c, d, e, f, g, h)

Americans with Disabilities Act

DESCRIPTION

The Americans with Disabilities Act (ADA) is a comprehensive anti-discrimination law for persons with disabilities. ADA provides basic civil rights protection to persons with disabilities.

PURPOSE

ADA seeks to ensure access to equal employment opportunities based on merit. Title I (Employment) of the ADA requires that all employers ensure that their employment practices do not discriminate against qualified persons with disabilities in the application and recruitment process, hiring, advancement, training, compensation or discharge of an employee, or in any other terms, conditions, and privileges of employment. Under ADA, employers must not refuse employment to a qualified person with a disability based on that person's disability if the person can perform the essential functions of the job, with or without reasonable accommodation.

ELIGIBILITY

To be protected under Title I of the ADA, an employee must be a "Qualified Individual with a Disability" (QID) and be able to perform the essential job functions with or without reasonable accommodation.

ADA regulations define a QID as a person with a disability who:

1. Satisfies the employer's requirements for the job, such as education, employment experience, skills, or licenses.
2. Can perform the essential job functions, with or without reasonable accommodation.

The term “essential functions” means the fundamental job functions of the employment position the individual with a disability holds or desires. The term does not include the marginal functions of the position. A job function can be considered essential for the following reasons:

1. The reason the position exists is to perform that function;
2. There are a limited number of employees available among whom the performance of that job function can be distributed; and/or
3. The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

DEFINITIONS

1. With respect to an individual “disability” means:
 - b. Having a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - b. Having a record of such an impairment; or
 - c. Being regarded as having such impairment.
2. “Physical impairment” means any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems:
 - a. Neurological
 - b. Musculoskeletal
 - c. Special sense organs
 - d. Respiratory (including speech organs)
 - e. Cardiovascular
 - f. Reproductive
 - g. Digestive
 - h. Genito-urinary
 - i. Hemic and lymphatic
 - j. Skin and endocrine

3. "Mental impairment" means any mental or psychological disorder such as:
 - a. Mental retardation
 - b. Organic brain syndrome
 - c. Emotional or mental illness
 - d. Specific learning disability
4. "Substantially limits" means the individual with a disability is:
 - a. Unable to perform a major life activity that the average person in the general population can perform.
 - b. The following factors should be considered in determining whether an individual is substantially limited in a major life activity:
 - (1) The nature and severity of the impairment;
 - (2) The duration or expected duration of the impairment; and
 - (3) The permanent or long-term impact, or the expected impact of the impairment.

ADA does not provide an exhaustive list of the specific types of disabilities that would constitute "physical impairment" or "mental impairment." Instead, ADA offers a functional definition that is broad enough to cover new disabling conditions as they surface.

USAGE

Generally, the individual with a disability will request a reasonable accommodation. Each request should be considered on a case-by-case basis.

State of California agencies must provide reasonable accommodation to the known physical or mental limitation of a qualified applicant or employee with a disability. Failure to do so may be considered an unlawful act of discrimination.

DEFINITION OF REASONABLE ACCOMMODATION

Reasonable accommodation is a modification or adjustment:

1. To the application process.
2. To the work environment or the circumstances under which the position held or desired is customarily performed.
3. Which enables individuals with disabilities to enjoy equal benefits and privileges of employment.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

The Department of Rehabilitation (DOR) has been designated the lead agency in the State of California's ADA implementation effort. The DOR has established an ADA Implementation Section that is available for technical assistance, consultation, training, and education for State agencies and those individuals seeking information on a wide variety of ADA-related topics.

The employment provisions of ADA are enforced by the same procedures used to enforce Title VII of the Civil Rights Act of 1964, as amended in 1991. Complainants may file a charge with the Equal Employment Opportunity Commission (EEOC) or the State of California agency charged by the EEOC with accepting complaints, the California Department of Fair Employment and Housing (DFEH).

SPB is responsible for accepting, evaluating, and making recommendations on appeals alleging disability discrimination, including appeals based on denial of reasonable accommodation requests.

LEGAL AUTHORITY

Government Code Sections 18701, 19231, 19241, 19792
Government Code Reference: Section 19230, 19231, 19240-44
Government Code and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disability Act of 1990)

Fair Employment and Housing Act

DESCRIPTION

The Fair Employment and Housing Act (FEHA) prohibits employment discrimination and harassment based on a person's disability or perceived disability. FEHA is a California State law enforced by DFEH. Where differences between federal and state law exist, employers should comply with those provisions that are most beneficial to the employee.

Under FEHA, it is an unlawful employment practice for an employer, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of any person, to refuse to hire or employ the person. FEHA also prohibits an employer's refusal to select the person for a training program leading to employment or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment.

FEHA makes it an unlawful employment practice for an employer to make any medical, psychological, or disability-related inquiry of any job applicant or, with regard to an employee, to make such an inquiry unless it is job-related and consistent with business necessity. Employers are required to reasonably accommodate an individual with a mental or physical disability unless the employer can show that to do so would cause an undue hardship. FEHA also requires that the employer engage in a timely, good faith, interactive process with an employee or applicant who requests reasonable accommodation.

DEFINITIONS

FEHA contains broad definitions of mental disability, physical disability, and medical condition. The definitions of mental disability and physical disability are to be construed so that applicants and employees are protected from discrimination due to an actual mental or physical impairment that is disabling, or is perceived to be disabling or potentially disabling.

It is an unlawful employment practice for an employer to refuse to hire or employ a person or otherwise discriminate because of specified personal characteristics, including mental or physical disability or known medical condition.

Mental disability includes, but is not limited to the following:

Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limit a major life activity.

Physical disability includes, but is not limited to, all of the following:

1. Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of the following body systems - neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
2. The disability affects specific body systems and limits an individual's ability to participate in a major life activity.

Mental or physical disability does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorder resulting from the current unlawful use of controlled substances or other drugs.

Medical condition means either of the following:

1. Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.
2. Genetic characteristics, for the purpose of this section, means either of the following:
 - a. Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.
 - b. An inherited characteristic that may derive from the individual or family member that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of developing of a disease or disorder and that is presently not associated with any symptoms of any disease or disorder.

LIMITS A MAJOR LIFE ACTIVITY

“Limits” shall be determined without regard to mitigating measures, such as medication, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult. Major life activities shall be broadly construed and shall include physical, mental, social activities, and working.

A person covered under FEHA would be someone who:

1. Has an actual physical or mental disability or medical condition;
2. Has been perceived to have a disability;
3. Has had a record or history of a disability;
4. Is being regarded or treated as having, or having had a disability;
5. Has or has had a cancer-related condition.

Unlike federal disability law, when determining whether an individual has a disability under FEHA, mitigating measures are not taken into consideration. In other words, the availability of medication or an assistive device that assists the individual in overcoming the limitations of the disability is not considered in determining whether the individual has a disability that is protected under the law.

ESSENTIAL FUNCTIONS

Essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. Essential functions do not include the marginal functions of the position.

1. Job functions may be considered essential for any of several reasons, including, but not limited to, any of the following:
 - a. The function may be essential because the reason the position exists is to perform that function.
 - b. The function may be essential because of the limited number of employees available among whom the performance of that job can be distributed.
 - c. The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
2. Evidence of whether a particular function is essential includes, but is not limited to, the following:
 - a. The employer’s judgments as to which functions are essential.

- b. Written job descriptions prepared before advertising or interviewing applicants for the job.
- c. The amount of time spent on the job performing the function.
- d. The consequences of not requiring the incumbent to perform the function.
- e. The terms of a collective bargaining agreement.
- f. The work experiences of past incumbents in the job.
- g. The current work experience of incumbents in similar jobs.

REASONABLE ACCOMMODATION

Reasonable accommodation may include either of the following:

1. Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.
2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

UNDUE HARDSHIP

Undue hardship means an action requiring significant difficulty or expense when considered in light of the following factors:

1. The nature and cost of the accommodation needed;
2. The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility;
3. The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities;
4. The type of operations, including the composition, structure, and functions of the workforce of the entity; and
5. The geographic separateness, administrative, or fiscal relationship of the facilities.

Nothing in this law shall be construed to require an employer to provide an accommodation that produces an undue hardship to its operations.

AFFIRMATIVE RELIEF

Existing law requires state agencies to implement affirmative action employment programs for persons with disabilities. With certain exceptions, the law declares it to be the policy of the State to make reasonable accommodation for the known physical and mental limitations of an otherwise qualified applicant or employee.

Affirmative relief or prospective relief includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices.

RESPONSIBILITY FOR ADMINISTERING THE PROGRAM

DFEH is responsible for administering the program.

LEGAL AUTHORITY

Government Code Sections 12920 et seq., 12926, 12926.1, 12940, 12955.3, 19231